



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : William D. Morgan
Serial No. : 08/828,330
Filed : 03-28-97
For : INSULATED REMOVABLE
POND COVER
Docket No. : I 852-002-PAT

Group Art Unit: 3621

Examiner: R. Canfield

RECEIVED

OCT 02 2001

TO 3600 MAIL ROOM

NOTED
10/10/01

Commissioner of Patents and Trademarks
Washington, D. C. 20231

REPLY BRIEF

Applicant concurs with paragraphs one through nine of the Examiner's Answer.


In Response, the Examiner made two statements. First the Examiner said, without case support, that failing to respond to an Examiner's Comments as to reasons for Allowance is evidence of surrender. To the contrary it is not evidence of surrender, it is evidence of allowance. Moreover, one skilled in claim drafting understands that an invention having allowable subject matter may be claimed in a variety of different manners. Not responding to Examiner's comments as to reasons for allowance is evidence that allowable claims might be written in a variety of manners not merely the manner outlined in an Examiner's comments.

Second, the Examiner asserted that failing to respond to the Examiner's Comments on Reasons for Allowance raises a presumption of acquiescence. Thereafter, three cases were cited. Each of these cases is distinguishable from the present case as each of these cases is interpreting existing claims in an infringement action. We are not in an infringement action nor are we seeking to interpret claims. We are seeking to determine if the present proposed claims are patentable under 35 U.S.C. §251. The appropriate cases are those cited in applicant's original brief.

Moreover, relying on a presumption is ill fated security. A presumption can be overcome with a scintilla of evidence to the contrary. In the present case we have a statement expressing that the prior patent counsel did not understand the full scope of the invention. The present state of the claims, deemed allowable under §§101-103, are proof that the prior attorney did not understand the full scope of the invention. The Examiner's asserted presumption does not exist and the claims should be allowed.

Applicant requests observation of the long standing policy of the Patent Office of issuing valid patents.

ANGENEHM LAW FIRM, Ltd.

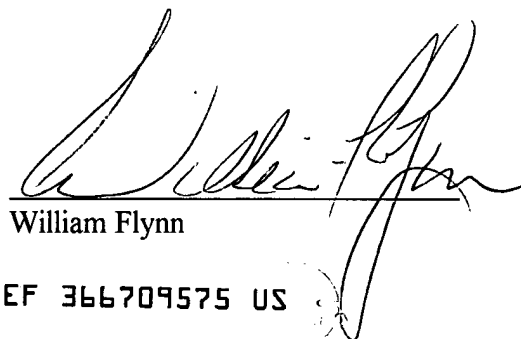
By 
N. Paul Friederichs, Reg. No. 36,515
P.O. Box 48755
Coon Rapids, MN 55448
Telephone: 952 933-3225



CERTIFICATE OF MAILING, EXPRESS MAIL

I, the undersigned, hereby certify that the foregoing documents are being deposited with the United States Postal Service as, Express Mail, postage prepaid, in an envelope addressed to Commissioner of Patents and Trademarks, Washington, DC 20231 on this 25th day of September, 2001.

1. Reply Brief (2 pg.)
2. Certificate of Mailing (1 pg.)
3. Return Postcard


William Flynn

EF 366709575 US

Express Mail No.

September 25, 2001
Date

RECEIVED

OCT 02 2001

Applicant: William D. Morgan
For: Insulated Removable Pond Cover
Serial No.: 08/828,330
Docket No.: I 852-002-PAT
Date Filed: March 28, 1997

IN 3600 MAIL ROOM